

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No.: 2:22-cv-730-SPC-KCD

MARLENE MORTEN,

Defendant.

ORDER

Before the Court is Plaintiff United States' Renewed Motion for Relief from the Summary Judgment Filing Limitation. (Doc. 26). This case is about Defendant Marlene Morten's unpaid federal income tax liabilities for the 2005, 2006, and 2015 tax years. The Government seeks leave to file an early motion for summary judgment on Morten's 2005 tax liability but still retain the opportunity to file a later motion for summary judgment on other tax years. For the following reasons, the Court denies the Government's Motion.

The Court's Case Management and Scheduling Order explicitly states, "Only **one** motion for summary judgment may be filed by a party...absent leave of Court." (Doc. 21 at 4). In support of its request to file multiple motions for summary judgment, the Government argues litigation of the 2005 tax liability is barred based on res judicata. The Government says this 2005 tax liability

was at issue before a United States Tax Court and appealed to the Court of Appeals for the District of Columbia Circuit. According to the Government, an early summary judgment on Morten's 2005 tax liability will narrow discovery and the issues for trial and conserve Court resources.

Morten opposes the Government's request. (Doc. 34). She claims litigation on the 2006 tax year may also be barred based on that same Tax Court case, so summary judgment on 2005 tax liability will raise similar issues to 2006 tax liability. And Morten states she requires discovery to oppose the Government's motion for summary judgment.

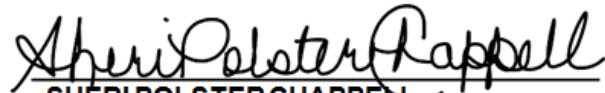
The Court agrees with Morten. Should issues involving the 2005 tax liability overlap with the 2006 tax liability, two motions for summary judgment will waste—not conserve—judicial resources. And Fed. R. Civ. P. 56(d) specifically provides that if a nonmoving party cannot present facts essential to justify its opposition to summary judgment, the Court may deny considering the motion or issue any other appropriate order. Given Morten's response, the Court finds that is the case here.

Accordingly, it is now

ORDERED:

The United States' Renewed Motion for Relief from the Summary Judgment Filing Limitation (Doc. 26) is **DENIED**.

DONE and **ORDERED** in Fort Myers, Florida on July 24, 2023.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record